IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.636/2002

Mohd. Saleem S/o Shri Mukhtyar Ahmed
Versus
State of Rajasthan through Public Prosecutor

Date of Judgment :::: 21st May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Sumer Singh Choudhary, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State

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//Reportable//

By the Court:-

Accused-appellant Mohammad Saleem S/o Mukhtyar Ahmed has preferred this appeal under Section 374 of the Code of Criminal Procedure, challenging the judgment and order dated 16.4.2002 of his conviction and sentence passed by the Additional District & Sessions Judge (Fast Track) No.2, Jaipur City, Jaipur, in Sessions Case No.123/2001 (6/2002), whereby he was convicted and sentenced as under:-

Under Section	*Sentence of imprisonment*
304-B, IPC	To undergo 7 years rigorous imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo 6 months additional rigorous imprisonment.

Under Section	*Sentence of imprisonment*
498-A, IPC	To undergo 3 years rigorous imprisonment and a fine of Rs.1,000/-; in default of payment of fine, to further undergo 2 months additional rigorous imprisonment.

Both the sentences were ordered to run concurrently.

Briefly stated the facts of the case are that PW-1 Safika Khatun W/o Mohammad Subedar, Resident of Lakshmipur, Police Station Bela, District Gaya (Bihar), lodged a report at Police Station Moti Dungari, Jaipur, on 28th April, 2001, alleging therein that her daughter Chando Khatun was married about two years ago to Mohammad Saleem S/o Mukhtyar Ahmed, Resident of Chaatar Ghat, Police Station Chandauli, District Gaya (Bihar), at present Resident of House No.J-38, Barkat Marg, Bhomiyonji-Ki-Chhatri, Jaipur. It was further alleged that soon after the marriage of her daughter, her husband (the appellant) Mohammad Saleem started taunting on her and demanded money threatening her of contacting second marriage with another lady, but her daughter tolerated all assaults and harassments of her husband. Her husband demanded Rs.50,000/- from her in presence of her daughter stating that he wants to start business at Jaipur. Her daughter told that a huge amount has already been incurred in the marriage and it will be very difficult

now to arrange for further money. Thereafter he brought her daughter at Jaipur. On 19.4.2001 when dead-body of her daughter reached the village Chaatar Ghat, they were informed about it and thereafter they immediately went there. Her daughter had already told her that Saleem would kill her and in fact now he has already killed her. Thereafter, she came at Jaipur and made an enquiry. The neighbours were telling that she fell down from staircase and sustained injuries and thereby she died but she suspects that her daughter has been killed by Saleem for and in connection with demand of dowry. On the basis of this information, the police registered FIR No.72/2001 (Exhibit P-2) under Section 498-A and 304-B, IPC.

It is relevant to mention that deceased Chando Khatun died on 17.4.2001 at Jaipur and the report in this regard was registered under Section 174 Cr.P.C. and a postmortem of the dead-body was also conducted and after completion of other formalities the dead-body was delivered, which was taken to village Chaatar Ghat (Bihar). The place of occurrence was also visited by Shri V.N. Mathur, the Assistant Director, Serology Division, Police Forensic Science Laboratory, Rajasthan, Jaipur, along with his associates and photographs were taken and a report of scene of crime (Exhibit P-3) was prepared.

After completion of investigation, the police

filed a charge-sheet against accused. The trial court framed charge against the appellant under Section 498-A and 304-B, IPC, which were denied and the trial was claimed.

The trial court, after considering the evidence of both the parties on the record and upon hearing their submissions, convicted and sentenced the accused appellants, as mentioned above.

The learned counsel Shri S.S. Choudhary, appearing for the appellant, contended that the deceased fell down from the staircase in the house and sustained injuries and and on account thereof she died and a report in this regard was lodged and on an enquiry made under Section 174, Cr.P.C., no one suspected and no complaint was made to the Sub Divisional Magistrate or the police about alleged dowry death of the deceased, but later-on PW-1 came at Jaipur and only after making a contact with the Advocate, the report Exhibit P-1 was lodged on 28.4.2001 with a delay of 11 days, which has not been explained satisfactorily also. He further contended that, in fact, it was an accidental death and the appellant is innocent. There is no prosecution evidence to connect the accused with the crime. The prosecution witnesses do not say that she was inflicted any injury by accused or that accused murdered her.

It is further contended that there was no

demand of dowry and the trial court has wrongly drawn a presumption under Section 113-B of the Indian Evidence Act. Alternatively, it is contended that as per the contents of Exhibit P-1 itself it is clear that the so-called demand of Rs.50,000/- was for starting business at Jaipur and the said fact is also proved from the statement of PW-1 Smt. Safika Khatun and PW-2 Moinuddin. Therefore, even if any demand was made by the appellant for rupees fifty thousand for starting business then the said demand cannot be termed as 'demand of dowry' in connection with marriage and the provisions of Section 304-B, IPC, are not attracted; in these circumstances no presumption could have been drawn by the trial court under Section 113-B of the Indian Evidence Act.

It is further contended that there was no charge against the appellant under Section 302, IPC, as not a single witness is there to prove that the accused killed Smt. Chando Khatun. He, therefore, contended that the trial court has committed an illegality in convicting and sentencing the accused-appellant and thus the impugned judgment passed by the trial court is liable to be set-aside, and the appellant is liable to be acquitted.

The learned Public Prosecutor supported the judgment of the trial court and contended that there is overwhelming prosecution evidence to prove the

charge against the accused-appellant. PW-1 Smt. Safika Khatun, PW-2 Moinuddin and other prosecution witnesses have specifically stated that soon after marriage of deceased, she was subjected to cruelty or harassment by the appellant for, or in connection with, demand of dowry. There was a specific demand of Rs.50,000/- by the appellant which was not fulfilled and due to it the deceased was killed by him, therefore, it was contended that there is no merit in any of the contentions of the learned counsel for the appellant and the appeal is liable to be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

The trial court, in its impugned judgment, has discussed the oral and documentary prosecution evidence as well as the defence evidence, in detail, and recorded a finding that deceased Chando Khatun died within 7 years of her marriage under abnormal circumstances and she was subjected to assault or harassment by her husband (appellant) for, or in connection with, demand of dowry, soon before her death, therefore, the provisions of Section 113-B of the Indian Evidence Act are attracted and there is a presumption that it is a case of dowry death. The accused-appellant could not explain as to how her

death was not dowry death and in absence of plausible explanation on behalf of the appellant, the learned trial court convicted and sentenced him. The trial court considered the statement of accused recorded under Section 311, Cr.P.C., wherein it was stated by him that deceased died because of her falling down from staircase and thereby sustained injuries resulting in her death, but the same was not found to be proved for the reasons recorded by the trial court, which have been considered by me in the light of submissions of the learned counsel for the parties as well as the record of the trial court and I do not find any illegality in the said reasonings.

There is no dispute in between both the parties that Smt. Chando Khatun died within 7 years of her marriage under abnormal circumstances. In Exhibit P-1 it was stated that Chando Khatun was married to the appellant about 2 years ago. PW-1 Safika Khatun, the mother of the deceased, in her statement, before the trial court, recorded on 2nd February, 2002, stated that her daughter Chando Khatun was married to the appellant Mohammad Saleem about 3 years ago. The counsel for the appellant has also not disputed that the marriage of deceased with the appellant took place 2 years ago from the date of her death.

So far as death of deceased Chando Khatun is concerned, there is no dispute that her death was not

natural. The deceased died on 17th April, 2001, and a report was lodged in this regard and enquiry was made under Section 174, Cr.P.C. The postmortem of her dead body was conducted. As per the postmortem report (Exhibit P-19) the deceased sustained following injuries:-

> (1). Incised wound 3-½ cm x ¼ cm RL temperol-parietal region parallel to sagittal suture it is 12 cm from RL mastoid bone and 18 cm from Glabella brain matter is coming out through this wound margins of wound is clear cut regular well defined not contused scalp hair are cut at same place with full clotted blood.
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> 2. Incised wound 2½ cm x ¼ cm x scalp bone deep on RL parietal region anterior to Injury no.(1) with a gap of 2 cm in the same level and parallel to sagittal suture with clotted blood; Margins are clear cut regular well defined with 10 cm from RL mastoid process and 14 cm from Glabella. Scalp hair roots are cut at same plane with fresh clotted blood.
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> Direction finding – On direction there is ante-mortem haematoma in area of size 4x3 cm on the internal surface of scalp and corresponding RL frontal eminence dark red in colour (this is considered as injury no.3) further there is another contusion of size 5x4 cm on left occipital region on linear part with ante-mortem haematoma dark red in colour which is considered as injury no.4) on further exploration the skull bone RL parietal below the injury no.1 & 2 are found fractured (Incised-cut) involving both the tables of skull bones and underlying dura found cut under the injury (1) through which the brain matter is draining out through the fractured skull bone with the sub-scalp area. Further all the skull bones forming the vault of skull (occipital, bale parietal RL temporal found depressed fractured in spider web pattern extending into

posterior cranial fosa reaching up to foremena magnum with contused laceration of RL side dura up to base of skull with antemortem haematoma. The brain matter is lacerated in the RL parietal region at multiple side.

(5) Ant. abrasion ¼ cm linear on chin at its center with clotted reddish blood two in number.

(6) Linear and cresentic abrasions of size ½ x ¼ to ¼ cm linear on left dura laterally at wrist with reddish clotted blood in an area of 3x2 cm.

(7) Bruise 3x3 cm RL side medial knee above and medial reddish colour.

(8) Incised wound of size 1 x ¼ x skin deep spindle shape with clear cut margin reddish colour on left thigh antereo-laterally middle 1/3

(9) Multiple linear cut abrasions of size ¼ cm x 1/8 cm to pin-head size surrounding injury (8) with reddish clotted blood continued

(10) Abounded bruise 1x1 cm left knee -anterio reddish colour;

(11) Bruise 2x2 left leg 1/3 anteriorly at tibial shin reddish colour;

(12) Bruise 2x2 RL side upper 1/3 leg anterio medially reddish colour."

The opinion of the Medical Board was as under:-

(1) All above injuries are antemortem in nature and just in duration prior to death.

2. Injury no.1 and 2 are caused by sharp edged weapon. Injury no.1 is self sufficient to cause death in ordinary course of nature.

(3) Injury no.3 and 4 are caused by a

> blunt weapon and self sufficient to cause death in ordinary course of nature.
>
> (4) Injury no.8 is caused by sharp edged weapon.
>
> (5) Injury no.5 and 9 are caused by pointed sharp-weapon

As per the postmortem report (Exhibit P-19) the cause of death is ante-mortem head injury. Therefore, there is no dispute that death of Chando Khatun was not natural and she died due to head injury. Even as per the case of defence the deceased fell down and sustained injuries, therefore, according to defence theory also her death was not natural.

In view of the above it is clear that the deceased died within 7 years and her death was under abnormal circumstances.

For ready reference it will be relevant to refer and reproduce Section 304-B, 498-A of the Indian Penal Code, as well as Section 113B of the Evidence Act, as under:-

> "**304B. Dowry death**.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

"**498A. Husband or relative of husband of a woman subjecting her to cruelty**.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

"**113B. Presumption as to dowry death**.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this Section, "dowry death" shall have the

same meaning as in Section 304B of the Indian Penal Code (45 of 1860).”

To attract the presumption under Section 113-B of the Indian Evidence Act, it is necessary for the prosecution to prove all the ingredients of Section 304-B, IPC. As discussed above, the first two ingredients are proved in the case. Now the third and 4th ingredients which are important ingredients of Section 304-B, IPC, are as under:-

> (3) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
> (4) such cruelty or harassment must be for or in connection with demand of dowry.

If all the ingredients of Section 304-B, IPC, are established by acceptable evidence in a case then such death of a woman shall be called “dowry death” and such husband or his relative shall be deemed to have caused her death. It is relevant to mention that punishment for the offence of dowry death u/s.304B, IPC, is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under Section 498A, IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three

years and shall also be liable to fine. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304B, IPC, an exception is made by deeming provision as to nature of death as “dowry death” and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Thus, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the ingredients of the offence are proved by the prosecution.

In view of the above position of law, it is now necessary to discuss the prosecution evidence in respect of above referred two ingredients of the offence under Section 304-B, IPC, that the deceased was subjected to cruelty or harassment soon before her death by the appellant and the said cruelty or harassment was for, or in connection with, the demand for dowry in connection with her marriage.

PW-1 Safika Khatun, the mother of the deceased, has stated that they had given sufficient dowry in the

marriage of the deceased. The appellant started assaulting and taunting her daughter from the very beginning after her marriage for, or in connection with, demand of dowry. It was further stated that Saleem demanded rupees fifty thousand. Her daughter was not willing to come to Jaipur, but the appellant brought her against her will. Thereafter his behaviour with her daughter at Jaipur was not proper. Her daughter had told her that although she has been sent to Jaipur, but the appellant used to quarrel with her everyday and number of times she was beaten by him. The deceased also told her that the appellant used to tell her that he will contact second marriage in case the arrangement of cash amount is not made and she will be killed. The deceased lived for about four months at Jaipur but she was ill-treated by the appellant there.

PW-2 Moinuddin, the uncle of the deceased, also stated that accused Saleem teased Chando number of times and demanded fifty thousand rupees in dowry.

The learned counsel for the appellant, on the basis of statements of PW-1 and PW-2, contended that both the witnesses have stated that demand of fifty thousand rupees was made for starting business at Jaipur, but from their statements it is clear that this amount was not demanded as a loan rather their statements reveal that soon after marriage the appellant started demanding more dowry which is clear

from the fact that he demanded fifty thousand rupees, may be for starting business, but demand was not as a loan, therefore, it was nothing except a 'demand of dowry'.

The other prosecution witnesses have also stated about demand of dowry by the appellant and his misbehaviour with the deceased thereby causing cruelty and harassment to the deceased. In these circumstances, it is proved from the prosecution evidence that soon before the death of Chando Khatun, she was subjected to cruelty or harassment by the appellant for, or in connection with, demand for dowry. Her death was abnormal within 7 years of her marriage, therefore, the provisions of Section 113-B of the Evidence Act were attracted in the present case and the learned trial court rightly came to a conclusion that the charge against the appellant for the offence under Section 304-B, as well as 498-A, IPC, are fully proved.

So far as explanation of the appellant in respect of death of the deceased by falling down from the staircase is concerned, a bare perusal of Exhibit P-13 (site-plan) will show that there were only three steps at place marked 'A', therefore, injuries sustained by the deceased could not have come even if she would have fallen from these three steps of staircase.

It is also relevant to mention that a report of scene of crime was prepared by PW-3 Shri V.N. Mathur, the Assistant Director, Serology Division, Police Forensic Science Laboratory, Rajasthan, Jaipur, with his team and 9 photographs were annexed marked as Exhibit P-4 to P-12 and as per this report the blood and bloodstains were detected at the following places:-

1. Thick blood stain was detected inside the door panel of the entrance gate (Iron gate) at the height of 51" (Fifty one inches) from the surface on and near the latch (Kundi) marked as 'A' (Photograph No.2).

2. Blood Stains were detected on the right side wall of the narrow passage (from the entrance) of the house, marked as 'B' and 'C' respectively. (Photograph No.3, 4).

3. Single blood stain was also detected on outside of the door panel of the entrance gate (Iron gate) marked as 'D' (photograph No.5).

4. Blood was also detected on the floor-del-just out the iron door (Main entrance) marked as 'E'.

5. Few blood stains were also detected in the corner of the last step which was outside the main entrance and adjoining to the road where Mrs. Chando was alleged to be fell down marked as 'F' (Photograph No.7).

6. Blood was also detected on the floor of the living room of deceased marked as 'G'. These stains were not visible to the naked eye because it was told that the floor has been washed, but on chemical examination these gave positive test for the presence of blood. (Photograph No.8)

> 7. Few blood stains were also detected on the floor (Near the inner door) of the room just adjoining to the main entrance. This room is a Tailor's shop (A one king Tailors) having a tailoring machine and front of it bears shutter."

It is also relevant to mention that clothes of deceased were seized by seizure-memo (Exhibit P-15) and 7 piercing holes were found in Salwar of the deceased. As per the postmortem report two incised wounds were sustained by the deceased which could have been caused by sharp-edged weapon only and according to the statement of Dr. Shiv Ratan Kochar (PW-9) the said injuries could not have come in case deceased would have fallen from the staircase.

The learned counsel for the appellant referred to the statement of the landlord of the appellant in order to prove that it was a case of falling down of the deceased from staircase, but from their cross-examination it is clear that they were not eye-witnesses to the occurrence and even otherwise the same are not corroborated with postmortem-report (Exhibit P-19), seizure-memo of clothes of deceased (Exhibit P-15) and report of Serologist (Exhibit P-3).

In these circumstances it is clear that the explanation given by the appellant under Section 313, Cr.P.C. is not correct, he gave false explanation which cannot be accepted, rather it connects the

accused with the crime.

So far as the contention of the learned counsel for the appellant about delay in lodging the report that too after consultation with Advocate is concerned, it is relevant to mention that the complainant is resident of a village of State of Bihar, whereas the incident took place at Jaipur and she was not informed immediately after the death of deceased, but she was informed only after the dead-body of deceased reached at her matrimonial village i.e. Chaatar Ghat; they saw number of injuries including head-injury on the person of the deceased and only thereafter they suspected on her death. The complainant has also explained that she was given message that the deceased died due to falling from the staircase and other persons of the village i.e. Chaatar Ghat also told her that deceased fell down from staircase and died. In these circumstances, the report was not lodged immediately.

It is also relevant to mention that the parents or real brother of the deceased were not preset at Jaipur when inquest-report was prepared by S.D.M. or police at Jaipur, therefore, no one was there to raise any objection or to make a complaint in respect of death of the deceased due to demand of dowry.

In these circumstances, the delay in lodging the report has been explained satisfactorily and the

prosecution case does not fail on this count as contended by the learned counsel for the appellant.

In view of the above discussion and reasons, I do not find any merit in any of the contentions of the learned counsel for the appellant. There is no merit in this appeal and the same is hereby dismissed.

(Narendra Kumar Jain) J.

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